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SUMMARY OF ATTORNEY GENERAL'S OPINIONS*

ADMINISTRATIVE LAW. Board of County Commissioners: Contracts. When the Board of County Commissioners awards a contract and it has been reduced to writing and signed, and the performance bond furnished and approved, in the absence of fraud such contract becomes final and passes from control of the board.¹

Board of County Commissioners: County courthouse office space. The Boards of County Commissioners have no authority to permit the use of space in the county courthouse by a private business, unless such business performs a necessary county function. Abstract and title companies do not come within this exception. An official court reporter, although engaged partially in activities *not* of an official nature, should be granted space in the courthouse for the convenience of the court, the attorneys and the litigants.²

Board of County Commissioners: Leasing of public buildings. The County Commissioners may not lease a portion of the county health clinic to a physician for his exclusive use in the private practice of medicine, since county buildings are held in trust for public use and county commissioners have no power to permit the property to be used any other way.³

Board of Public Instruction: Group insurance. The Board of Public Instruction of Dade County has no authority to expend public funds into a trust fund for the purpose of purchasing health and hospitalization insurance for employees.⁴

Department of Public Welfare: Aid to dependent children. Where the statute of limitations has run, it would be a futile thing to require the mother of an illegitimate child seeking aid to bring an action for support against the reputed father as a condition precedent to the Welfare Department's considering the case.⁵

Florida Development Commission. Pursuant to the laws of Florida, the State Advertising Commission and the State Improvement Commission

*This issue of the Summary contains those opinions of general or public interest from OP. ATT'Y GEN. 055-81 April 7, 1955, through 055-226 September 1, 1955.

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1. OP. ATT'Y GEN. 055-76 (March 31, 1955).
2. OP. ATT'Y GEN. 055-101 (May 11, 1955).
3. OP. ATT'Y GEN. 055-184 (Aug. 23, 1955).
4. OP. ATT'Y GEN. 055-100 (May 11, 1955).
5. OP. ATT'Y GEN. 055-80 (April 6, 1955).

are abolished and the powers, duties and functions theretofore exercised by one or the other are vested in the Florida Development Commission⁶

Florida Milk Commission: Penalty. Where conduct of a licensee or permittee is such as would authorize the Milk Commission to suspend or revoke a license or permit, the licensee or permittee may propose to the Milk Commission the imposition of a fine in lieu of revocation or suspension, and the commission, in its discretion, may accept such an offer.⁷

Internal Improvement Fund: Trustees. The trustees of the Internal Improvement Fund have authority to convey Murphy Act lands to county boards of public instruction since it would be a conveyance to an agency of the state or to a county within the purview and intent of the statute.⁸

State Racing Commission: Reinstatement of permit. Where an application for a permit to conduct a horse race track was approved by the Racing Commission, and ratified by an election as provided by statute, the legislature may reinstate and restore the permit when it has expired under the limitations in the statute.⁹

CONSTITUTIONAL LAW. *Extraordinary session.* The Constitution requires that the Governor call the legislature into extraordinary session when no apportionment is made, as required, at the regular session.¹⁰ At such extraordinary session the legislature may not consider bills, resolutions or joint resolutions covering any subject other than reapportionment, except in the event of an emergency requiring a constitutional amendment. Such amendment may be submitted without regard to its subject matter.¹¹

CONTRACTS. *Surety and guaranty contracts.* Distinctions between contracts of surety and guaranty have not been removed in this state by either legislative or judicial enactment. Thus, "guarantee agreements" which are executed independently and are collateral to the principal contract are agreements of strict guaranty and are not contracts of indemnity or surety.¹²

CORPORATIONS. *Foreign corporations.* A foreign corporation which maintains an office in this state as headquarters for its agents and solicitors who take orders for the interstate shipment of merchandise, such orders not being subject to acceptance in this state, nor stocks of such merchandise kept in this state, is not doing sufficient business within this state to require the procuring of a license. However, if the salesmen and solicitors are

6. LAWS OF FLA. c. 29788 (1955); OP. ATT'Y GEN. 055-167 (July 21, 1955).

7. FLA. STAT. § 501.09 (1953); OP. ATT'Y GEN. 055-170 (July 26, 1955).

8. FLA. STAT. § 192.38 (1953); OP. ATT'Y GEN. 055-163 (July 15, 1955).

9. FLA. STAT. § 550.06 (1953); OP. ATT'Y GEN. 055-91 (May 9, 1955).

10. FLA. CONST. Art. VII, § 3, as amended. (The legislature was required to make an apportionment of the senatorial districts in 1925 and every ten years thereafter).

11. FLA. CONST. Art. XVII, § 3; OP. ATT'Y GEN. § 55-123 (June 10, 1955).

12. OP. ATT'Y GEN. 055-177 (Aug. 1, 1955).

under the supervision and direction of a local officer or agent, licensing may be required.¹³

COUNTY OFFICERS. Compensation. The Constitution prohibits the passage of special or local laws regulating the fees of state or county officers.¹⁴ The officers of an improvement district are neither state nor county officers; they are district officers. Their remuneration may be fixed by a local or special act passed pursuant to the requirements of Article III, Section 21 of the Constitution.¹⁵

Offers of Reward. The Boards of County Commissioners have no authority to offer or to pay pecuniary rewards for the apprehension and conviction of persons charged with a crime.¹⁶

Residence requirements. A county commissioner who sells his home in his district and moves to a rented home in an adjacent district and apparently establishes his permanent residence there is deemed to have vacated his office.¹⁷

COURTS. Circuit Court deputy clerk:Qualifications. In order to be eligible for appointment as a deputy clerk of the circuit court, the applicant must have reached majority.¹⁸

A minor whose disabilities have been removed pursuant to statutory procedure may be appointed a deputy clerk of the circuit court.¹⁹

Small Claims Court: Clerical assistance. Before applying the maximum compensation fixed by statute,²⁰ the reasonable expenses for salaries of clerks and assistants is properly deductible from the fees collected by the Small Claims Court.²¹

CRIMINAL LAW. Illegal Lottery. A puzzle contest in which entrants pay a registration fee to entitle them to assemble puzzles is basically a contest of skill. It appears that the registration fee would constitute the paying of money upon the outcome of a game of skill and, as such, violates Florida law which designates such action as a wager upon the result of a contest of skill.²²

Misdemeanor: Fingerprinting. Since a misdemeanor is clearly a "criminal offense,"²³ a sheriff may, in his discretion, require fingerprinting of one charged with a misdemeanor.²⁴

13. OP. ATT'Y GEN. 055-127 (June 15, 1955).

14. FLA. CONST. ART. III, § 21.

15. OP. ATT'Y GEN. 055-98 (May 9, 1955).

16. OP. ATT'Y GEN. 055-134 (June 16, 1955).

17. FLA. STAT. § 114.01(4) (1953); OP. ATT'Y GEN. 055-182 (Aug. 3, 1955).

18. OP. ATT'Y GEN. 055-166 (July 20, 1955).

19. FLA. STAT. § 62.26 (1953); OP. ATT'Y GEN. 055-176 (Aug. 1, 1955).

20. FLA. STAT. § 42.05 (1953).

21. OP. ATT'Y GEN. 055-92 (May 4, 1955).

22. FLA. STAT. § 849.01 (1953); OP. ATT'Y GEN. 055-189 (Aug. 8, 1955).

23. *Gatewood v. Culbreath*, 47 So.2d 725 (Fla. 1950).

24. FLA. STAT. § 30.31 (1953); OP. ATT'Y GEN. 055-110 (May 25, 1955).

Misdemeanor: Force permissible. Since a traffic violation is only a misdemeanor, a police officer does not have the right to shoot firearms at a traffic violator who increases the speed of his vehicle after the officer has made his presence known.²⁵

Revoking Drivers' Licenses: Driving while intoxicated. Upon conviction of driving a motor vehicle while under the influence of intoxicating liquor, the driver's license must be revoked, not suspended.²⁶ The effective time of the revocation will be the time of the adjudication of guilt.²⁷

Traffic Offenses: Summons to appear. There is no provision in the laws of Florida for a deputy sheriff to give written notice to appear to a person he has charged with violations of the statutes pertaining to operation of motor vehicles upon the public highways. The accused cannot be penalized should he fail to respond to such notice.²⁸

DOMICILE. Constructive Residence: Voting purposes. Where, by operation of law, the constructive domicile of a person has been established for the required period of one year in the state and six months in the county, the residence for voting purposes did not begin to run until the person was physically present at the established domicile.²⁹

EDUCATION. County School Superintendents: Textbook depository. Each county school superintendent may designate a retail dealer or retail outlet as a textbook depository for the purpose of having textbooks for purchase in the county.³⁰

The fact that only one depository may be established by the county superintendent does not preclude other retail outlets in the county from continuing the sale of textbooks.³¹

ELECTIONS. Consolidation of Precincts. The Board of County Commissioners does not have the authority to consolidate precincts without the recommendation and approval of the Supervisor of Registration as set forth in the Election Code.³²

Registration Books. The Supervisor of Registration of Hillsborough County is not authorized to place the registration books at convenient places within a city at a reasonable length of time prior to election. The time is controlled by law³³ and there is no authority for the supervisor to alter the prescribed registration procedure.³⁴

25. OP. ATT'Y GEN. 055-79 (April 6, 1955).

26. FLA. STAT. § 322.56 (1953).

27. OP. ATT'Y GEN. 055-77 (April 4, 1955).

28. OP. ATT'Y GEN. 055-90 (May 3, 1955).

29. OP. ATT'Y GEN. 055-216 (Aug. 26, 1955).

30. LAWS OF FLA. c. 29966 § 14(4) (1955).

31. OP. ATT'Y GEN. 055-185 (Aug. 4, 1955).

32. FLA. STAT. § 98.031 (1953); OP. ATT'Y GEN. 055-183 (Aug. 4, 1955).

33. LAWS OF FLA. c. 15533 § 16 (1931) as amended by c. 29562 §§ 2, 6 (1953).

34. OP. ATT'Y GEN. 055-193 (Aug. 11, 1955).

INSURANCE. *Association Furnishing Medical Aid.* An unincorporated association composed of a number of physicians who contract with persons to furnish, for consideration, medical services and medicine, is engaged in the business of insurance in Florida.³⁵

Issuance of Certificate. It is not violative of the laws of this state for an attorney to execute a certificate of a large alien insurer, if the certificate has no relationship to coverage of cargo or goods but merely evidences such coverage.³⁶

License Examination. The Insurance Commissioner may deny applicants the right to take the examination for an insurance agent's or solicitor's license where it has been ascertained that the applicant has violated the insurance laws by soliciting insurance without a license.³⁷

Regulation of Holdings. Pursuant to statute, the Insurance Commissioner of Florida has authority to regulate the amount of real estate owned by domestic life insurance companies³⁸ but not of life insurance companies incorporated in a state other than Florida even though they may be transacting business in this state.³⁹

LEGISLATION. *General Laws.* The legislature may not enact special or local legislation unless and until the notice or referendum requirements of the Constitution have been met.⁴⁰ The amendment of a bill applicable to the entire state so as to exclude a single county from its operation will convert the proposed legislation into a local bill, invalid if passed as a general bill.⁴¹

New Statutes: Application to pending cases. "Frequently, a new statute relating to court procedure and similar matters contains a provision making it inapplicable to pending cases." Where no such provision appears the new legislation becomes "immediately effective on any pending case."⁴²

MOTOR VEHICLES. *Financial Responsibility.* Under the revised law,⁴³ negligence in an accident is of no significance, even where one is obviously at fault. Where affected parties, without liability insurance, are involved in an accident, all must obtain releases or deposit securities with the state treasurer in addition to obtaining liability insurance.⁴⁴

Licenses. Parents must sign all minors' applications for drivers' licenses,⁴⁵ and must assume all responsibility for minors between the age of 14 and 18, even though said minor is married or divorced.⁴⁶

35. OP. ATT'Y GEN. 055-225 (Aug. 31, 1955).

36. OP. ATT'Y GEN. 055-141 (June 24, 1955).

37. FLA. STAT. § 627.81 (1) 1953); OP. ATT'Y GEN. 055-175 (July 29, 1955).

38. FLA. STAT. §§ 635.27-635.33 (1953).

39. OP. ATT'Y GEN. 055-195 (Aug. 11, 1955).

40. FLA. CONST. Art. III, § 21.

41. OP. ATT'Y GEN. 055-89 (April 28, 1955).

42. OP. ATT'Y GEN. 055-114 (June 1, 1955).

43. Laws of Fla. c. 29963 (1955) effective Oct. 1, 1955.

44. OP. ATT'Y GEN. 055-220 (Aug. 29, 1955).

45. FLA. STAT. § 322.09 as amended Laws of Fla. c. 29671 (1955).

46. OP. ATT'Y GEN. 055-143 (June 27, 1955).

MUNICIPAL CORPORATIONS. *Regulations: Intoxicating liquors.* A senate bill authorizing the Board of County Commissioners of Dade County to set legal hours of sale of intoxicating liquors⁴⁷ should be applied county-wide, and the bill takes precedence over a senate bill authorizing a municipality to regulate the sale, transportation, and possession of intoxicating liquors,⁴⁸ since the legislature may enact regulatory measures which are best for the public welfare.⁴⁹

PROCEDURE. *Constructive service: Certified mail.* Statutes which confer jurisdiction are strictly construed.⁵⁰ Registered mail must be used in serving notice to appear on a defendant. It is not permissible to use certified mail with return receipt requested.⁵¹

Summoning Petit Jurors. Pursuant to Florida law,⁵² petit jurors may be summoned by certified mail in lieu of registered mail.⁵³

Venue: Actions ex contractu. The venue in an *ex contractu* action is improper when the suit is brought in the jurisdiction where the contract was entered into if the breach occurred beyond such jurisdiction.⁵⁴

REAL PROPERTY. *Title Insurance.* A mortgage lender and its attorney may agree to require that the mortgagors order the title insurance through the lender's attorney. This is not violative of Florida law,⁵⁵ since the words of the pertinent statute are not so broad as to include the attorney as the agent of a title insurer he represents.⁵⁶

Title Insurance: Competitive bidding. It is not necessary that there be competitive bidding for title insurance on the right-of-ways the Turnpike Authority is acquiring for the Sunshine State Parkway.⁵⁷

SCHOOLS AND EDUCATION. *Dentistry: Licensing examination.* The Florida statutes require that the graduate of a foreign dental school complete a four year course in an accredited dental school in the United States in order to be eligible for the licensing examination.⁵⁸ However, the four year requirement does not mean that the applicant must spend that period in attendance at an accredited school. The applicant may complete the necessary work for a degree in a shorter period and still be eligible for examination.⁵⁹

47. Senate Bill 1397, c. 30434 (1955).

48. Senate Bill 1424, c. 30811 (1955).

49. OP. ATT'Y GEN. 055-168 (July 25, 1955).

50. FLA. STAT. § 42.10 (2), (3) (1953).

51. OP. ATT'Y GEN. 055-165 (July 20, 1955).

52. FLA. STAT. § 40.23 (1953).

53. OP. ATT'Y GEN. 055-142 (June 27, 1955).

54. OP. ATT'Y GEN. 055-144 (June 28, 1955).

55. FLA. STAT. §§ 627.92, 643.04 (10) (1953).

56. OP. ATT'Y GEN. 055-195 (Aug. 11, 1955).

57. OP. ATT'Y GEN. 055-174 (July 27, 1955).

58. FLA. STAT. § 466.13 (1953).

59. OP. ATT'Y GEN. 055-116 (June 1, 1955).

SECURITIES. *Insurance Policies as Securities.* An insurance policy which provides participating dividends and guarantees that such dividend, "apportioned per \$1,000.00 of insurance, shall be paid in cash and shall not be less than the cash dividend declared by the corporation, and paid in such year on five shares of its common stock" is not a security so as to require registration within the purview of the Florida securities statutes.⁶⁰

Registration. The Florida Securities Commission may, under proper circumstances, permit "purge" or *nunc pro tunc* registration of securities sold in technical violation of the statutes requiring registration. The person, firm or corporation seeking such registration must show good faith and that the statutory violation resulted from inadvertence rather than by design.⁶¹

STATUTE OF LIMITATIONS. *Claim for relief: Legislative authorization.* Though the statute of limitations upon a claim for relief has run,⁶² an act by the legislature authorizing the payment of the claim barred by statute is valid and payment may be made.⁶³

TAXATION. *Ad Valorem Tax: Water and sewer systems.* Private water and sewer systems in this state are subject to *ad valorem* taxation. Such systems should be assessed as real estate; and the main plant and the mains, pipe, etc., should be assessed as an entirety in the taxation district in which the main plant is located.⁶⁴

Exemptions. Tax exemptions are construed against the claimant and in favor of the taxing power.⁶⁵ Article IX, Section 9 of the Florida Constitution provides, in part, for a tax exemption for residents who have "... lost a limb or *been disabled* in war or by *misfortune*." Such "disability by misfortune" is one arising from accident, calamity, mishap, mischance or misadventure, which arises over and above the ordinary hazards of life and disease.⁶⁶

Homestead: *Denial of application.* Where a husband and wife each own property in two different counties and make application for homestead in both but only reside in one, the application for homestead will not be denied on the grounds of fraud. Since the homestead right is for the benefit of the entire family and not merely for the owner, exemption will be granted for the property they reside in.⁶⁷

Homestead: *Dependents.* A person owning real property but not residing therein may claim homestead exemption when those residing therein

60. FLA. STAT. § 517.02 (1953); OP. ATT'Y GEN. 055-159 (July 14, 1955).

61. OP. ATT'Y GEN. 055-122 (June 9, 1955).

62. FLA. STAT. § 95.37 (1953).

63. OP. ATT'Y GEN. 055-82 (April 14, 1955).

64. OP. ATT'Y GEN. 055-129 (June 16, 1955).

65. *State v. Doss*, 146 Fla. 752, 2 So.2d 303 (1941); *Stewart v. State*, 119 Fla. 117, 161 So. 378 (1935).

66. OP. ATT'Y GEN. 055-87 (April 26, 1955).

67. OP. ATT'Y GEN. 055-149 (July 5, 1955).

are legally and naturally dependent⁶⁸ upon the owner and are there with his consent.⁶⁹

Homestead: Property held in trust. A trustee who is also the beneficiary of trust cannot claim homestead tax exemption in property since the beneficiaries' right in the estate appears to be only a right to receive the income from the administration of the trust estate. Nowhere in the trust is there to be found any provision authorizing the occupancy of the dwelling house by the beneficiary.⁷⁰

Homestead: Tenants in common. Two separate homesteads cannot exist in the land at one and the same time. Where tenants in common own a parcel of real property, and make separate buildings thereon their permanent homes, each would be entitled to the homestead tax exemption on the portion of land he occupies as homestead, but only to the extent of his one-half undivided interest.⁷¹

Tangible Personal Property: Seizure for tax payment. Buildings, permanent in nature, placed upon leased property by a lessee, become a part of the realty unless otherwise provided by the parties. Where a building located upon leased property not subject to taxation has been assessed as tangible personal property upon the tax rolls, and such assessment is proper, delinquent taxes may be collected by seizure and sale of any of the tangible personal property of the taxpayer within the county.⁷²

Tangible Personal Property: Tax warrant. A tax warrant for delinquent tangible personal property taxes may be levied upon all the personal property of the taxpayer in the county in which the tax assessment was made, and against debts due to the taxpayer and against property in the hands of third persons.⁷³

68. FLA. CONST. Art. X, § 7.

69. OP. ATT'Y GEN. 055-204 (Aug. 18, 1955).

70. OP. ATT'Y GEN. 055-28 (April 5, 1955).

71. FLA. CONST. Art. X, § 7; OP. ATT'Y GEN. 055-85 (April 25, 1955).

72. FLA. STAT. §§ 200.07, 200.08 (1953); OP. ATT'Y GEN. 055-83 (April 20, 1955).

73. OP. ATT'Y GEN. 055-103 (May 16, 1955).